IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6226 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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VIPOR CHEMICALS PVT. LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 6226 of 2002

MR MIHIR H JOSHI for Petitioner No. 1-2

MR DN PATEL for Respondent No. 1

..... for Respondent No. 2-3

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 06/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr DN Patel, learned Sr. Standing Counsel waives service of rule on behalf of the respondents.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the action of the respondent- authorities under the Central Excise Act, 1944 of withholding payment of sanctioned rebate claims aggregating to Rs.1,36,998/- and withholding payment of interest on delayed payment of refund. The petitioner has also prayed for a writ of mandamus to direct the respondent- authorities to pay the aforesaid amount of Rs.1,36,998/- as the sanctioned rebate claims alongwith statutory interest at the prescribed rate on delayed payments of rebate till the date of payment.

3. The facts leading to filing of this petition are as under:-

3.1 The petitioner is a limited company incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing inorganic, organic chemicals and pharmaceutical products. The petitioner cleared finished excisable goods for export on payment of central excise duty, and on actual export of the goods claimed rebate as contemplated under Rule 12(1)(a) of the Central Excise Rules, 1944 vide applications as under:-

i. 25-1-2000 Rs. 36,718/-
ii. 3-10-2000 Rs.4,34,712/-
iii. 17-11-2000 Rs.2,31,161/-
iv. 17-11-2000 Rs.1,47,878/-.

3.2 On 5-2-2000, the Assistant Commissioner of Central Excise, Vadodara sanctioned the rebate claim made vide application dated 17-11-2000 for Rs.2,31,161/- but simultaneously adjusted central excise duty of Rs.34,396/- alongwith interest thereon (Rs.26,579) as pending Government dues of one M/s. JJ Chemicals, Vadodara and only the balance amount of Rs.1,70,186/- was ordered to be refunded. As far as the other application dated 17-11-2000 for rebate of Rs.1,47,878/- is concerned, the Assistant Commissioner sanctioned the said rebate claim also but simultaneously adjusted Central excise duty of Rs.46,684/- with penalty of Rs.10,000/and interest of Rs.19,339/- as pending Government dues under a separate order in original which had been carried by the petitioner in appeal and the balance amount of Rs.71,853/- was ordered to be refunded vide Assistant Commissioner's order dated 12-2-2001. Even for getting

the said amounts, the petitioner had to send reminders and also to take personal follow-up action. Ultimately, on 4-4-2001, the respondents handed over four cheques in respect of the above referred rebate claims, details of which are as under:-

i. 19-2-2001 Rs. 36,718/-
ii. 19-1-2001 Rs.4,34,712/-
iii. 12-3-2001 Rs.1,70,188/-
iv. 12-3-2001 Rs. 71,853/-

3.3 On 9-4-2001, the petitioner made a representation to the Deputy Commissioner of Central Excise, Vadodara making a grievance against the delay on the part of the department in releasing the cheques though the rebate claim had been sanctioned on 12-2-2001 and cheques had already been prepared, against the adjustment of dues of M/s. JJ Chemicals and also against adjustment of dues pursuant to an order in original which was challenged before the CEGAT and in which appeal the CEGAT had granted the say order on 20-3-2001. The petitioner, therefore, requested the department to make payment of the amounts of rebate with interest. In view of the grievance being made by the petitioner, the Officer on Special Duty, Customs and Central Excise, Citizens Charter Cell Vadodara forwarded the petitioner's complaint to the Deputy Commissioner, Central Excise and Customs, Division II, Vadodara (Mr HS Sharma) who responded by his letter dated 16-5-2001 annexed to Annexure E'. In the said letter, Mr Sharma admitted that the clarificatory letter written by the petitioner's son in connection with the rebate claim was sufficient enough for sanctioning the claim but still the details from the shipping company would have supported the petitioner's claim further and, therefore, his office was waiting for the details from the petitioner. In the aforesaid letter, Mr Sharma had acknowledged that the cheques were delivered to the petitioner late due to some administrative hassles. The delay was explained in the following words:-

> "In relation to other three rebate claims, they have been sanctioned within the prescribed time limit and the cheques were delivered to them late due to some administrative hassles i.e. exhaustion of cheque book and also verbal directions to issue cheque after 31st March 2001 due to revenue drive. So there is no such delay on our part to grant the rebate claim and whatever dues have been adjusted are being made in accordance with law under the provisions

of Section 11 of Central Excise Act, 1944. If they feel aggrieved from the said adjustment they should approach the appellate authority as the preamble of the OIO passed is very clear that it can be appealed before Commissioner(A).

It is requested that in future such type of routine cases should not be entertained and the matter of some genuine harassment or an act of the department where no other appellate remedy is available to the assessee should only be entertained as it leads to wastage of some precious man-hours."

3.4 The petitioner controverted the averments made in the Deputy Commissioner's letter dated 16-5-2001 by the petitioner's letter dated 21-6-2001 and again submitted a representation dated 21-6-2001 to the Commissioner of Central Excise complaining that in respect of the two separate rebate claim applications dated 17-11-2000, the amounts of Rs.60,975/- and Rs.76,023/- had been wrongly withheld. Specific allegations were made in the letter dated 6-7-2001 sent by the petitioner to the Commissioner of Central Excise, Vadodara in the following terms:-

"We are further aggrieved that the said letter dated 16-5-2001 from Mr HS Sharma makes false claims that Mr Jignasu Patel had orally agreed to submit certain documents and that he orally agreed to adjustment of our rebate claim amount against dues of M/s. JJ Chemicals.

On the contrary we say that claims were deliberately held up and Mr Ishwar Chauhan (Suptd.) demanded bribes to settle the claims and because we did not agree to give bribes Mr Ishwer Chauhan did not release the cheques. From the letter of Mr HS Sharma it is clear that he was also a party to the demand of bribes of Mr Ishwer Chauhan, and that Mr Sharma is only trying to shield the corrupt elements working under him with ulterior motives.

We request hereby to kindly

1. Take action against Mr Ishwer Chauhan and Mr HS Sharma.

2. Release the full amount of the claim against serial No.3 without adjusting any amount against the alleged dues of M/s. JJ Chemicals.

3. Release the full amount of the claim against serial No.4 without adjusting any amount against alleged demand for which we have been already granted the stay order.

4. Pay interest for the delay."

3.5 The petitioner again sent two reminders dated 8th August and 19th September, 2001 requesting the Commissioner to take necessary action as per the aforesaid letter dated 6-7-2001. The petitioner was, however, informed by the Deputy Commissioner (Vigilance) by letter dated 28-9-2001 that the petitioner was already advised to file an appeal against the adjustment of rebate claims and that regarding other issues action had been taken. The petitioner invited the attention of Mr KC Mangain, Commissioner of Central Excise & Customs, Vadodara making a specific grievance that Mr HS Sharma had made an attempt to cover up Mr Ishwer Chauhan who was demanding illegal gratification. Secondly, that there was evidence of rebate sanctioned on a particular date and the cheques also having been prepared but the cheques were not handed over to the petitioner and, therefore, the petitioner should not be driven to quasi-judicial process for obtaining the relief. The petitioner also made a grievance that other than giving sympathetic hearing to the petitioner at the personal visit, the Commissioner had not taken any action against the errant and corrupt officer in the matter. The petitioner had, in the meantime, preferred appeals before the Commissioner (Appeals) challenging the adjustment of the rebate claim sanctioned in the petitioner's favour, against dues of M/s.JJ Chemicals and against the petitioner's alleged dues in respect of which the petitioner's appeal was pending before the CEGAT. By his order dated 8-1-2002, the Commissioner (Appeals) accepted the petitioner's contentions and held as under:-

"I have carefully gone through the appeal. Prima facie the OIO is bad in law in as much as M/s.JJ Chemicals and M/s. Vipor Chemicals are independent legal persons irrespective of being one person being a director in one and a partner in other concern. Therefore, the dues pending against M/s.JJ Chemicals amounting to Rs.34,396/+ interest Rs.26,579/- could not be adjusted against the rebate claim sanctioned to the other. Even otherwise the Tribunal vide its order C/13710-11 dated 14-10-2000 in the appeal filed

by M/s.JJ Chemicals has remanded the case back to Commissioner (Appeals) for deciding the appeal without any deposit. In the event, the impugned order appropriating the amounts as above out of the rebate claim of the appellant is set aside to the extent."

3.6 Similar order dated 8-1-2002 was passed by the Commissioner (Appeals) in the other appeal in the following terms:-

"I have gone through the appeal. I find that out of the amount of rebate claim of Rs.1,47,846/- sanctioned to the appellant, an amount of Rs.46684.00 + Rs.10,000/- penalty and interest of RS.19,339.00 was appropriated against another order which adjudged dues against the appellants. This was done while application of stay was pending before the Tribunal. The Tribunal in its Order C2/765-66 dtd.20th March, 01 has remanded the matter back to the Commissioner (Appeals) to hear the appellant on merits without insisting on any pre-deposit. The pre-deposit of the amount adjudged therefore has been waived by the Tribunal and therefore the rebate amount cannot be appropriated against the dues adjudged in the impugned order till the disposal of the case on merits by the Commissioner (Appeals).

In that event, the OIO appropriating the above amounts against dues adjudged in OTO No.14-Demand/DC/DN/II/99 dtd.29.1.99 is set aside and the appeal allowed to that extent."

3.7 In view of the aforesaid orders, the petitioner submitted a further representation dated 30-1-2002 giving the exact details about the dates of applications for rebate, the amounts claimed, the amounts refunded, the dates on which the refunds were paid and the number of days by which the payments of rebate were delayed. The said details are as under:-

Application Date	Amount claimed (Rs.)	Refund paid on	Amount refunded (Rs.)	Delay (days)
25-01-2000	36,718	4-4-2001	36,718	340
03-10-2000	4,34,712	4-4-2001	4,34,712	80
17-11-2000	2,31,161	4-4-2001	1,70,186	47

17-11-2000 1,47,876 4-4-2001 71,853 47

The said representation was followed by another representation dated 16-5-2002. Since the respondents did not pay any heed to the said representations, the petitioner has been constrained to file the present petition on 5-7-2002 for the aforesaid directions requiring the respondents to return the aggregate rebate amount of Rs.1,36,998/- alongwith interest at the statutory rate on all the delayed payments of rebate.

4. After this Court issued notice on 8-7-2002 for final disposal, on 22-7-2002 the Deputy Commissioner has passed order returning the amounts of Rs.1,36,998/- and interest of Rs.2507/- aggregating to Rs.1,39,505/- by a single cheque to the petitioner. The petitioner's representative was called by the department on 23-7-2002 and was handed over the aforesaid cheque for the amount of Rs.1,39,505/-. The petitioner's representative, however, returned the said cheque to the department on the next day on the ground that the cheque amount was not sufficient to cover the payment of interest for the delay involved.

In response to the notice issued by this Court, affidavit-in-reply has been filed by Mr Pranesh Pathak, Deputy Commissioner of Central Excise & Customs, Division-II, Vadodara who is the successor to Mr HS Sharma. Even in the said reply affidavit, attempt is made to explain away the delay and it is stated that the "disbursement of the cheque to the petitioner got somewhat delayed due to administrative exigencies and there was no malafide intention or to harass the petitioner deliberately. It is submitted that in case the petitioner had any grievance in respect of the disbursement of the cheque pertaining to the refund, the petitioner was free to avail the appellate remedy."

It is submitted in the said reply that once refund had been granted by respondent No.3 - adjudicating authority, he was not empowered to review his order or to deal with the petitioner's grievance regarding disbursement of cheque pertaining to the refund. There is no explanation on record showing the calculation of interest at Rs.2507/- offered by the aforesaid cheque.

5. At the hearing of this petition, Mr Mihir Joshi, learned counsel for the petitioner has submitted that the facts stated in the petition which are not controverted

in the reply affidavit are eloquent and that the respondents had no justification for not paying the entire amount of rebate claim amounts in all the four applications, more particularly, when the Assistant Commissioner himself had sanctioned the rebate claims on 12-2-2001. As regards the adjustment made against the alleged pending dues of M/s. JJ Chemicals, it is submitted that apart from the fact that the petitioner-Company and M/s.JJ Chemicals were two separate legal entities, the CEGAT had vide its order dated 14-10-2000 remanded the matter to the Commissioner (Appeals) for deciding the appeal of M/s.JJ Chemicals without any pre-deposit. As regards the other adjustment also, the CEGAT had granted stay in favour of the petitioner on 28-3-2001 and, therefore, there is considerable substance in the case set out by the petitioner in the representations dated 6-7-2001 that Superintendent Mr Chauhan had not acted honestly and Deputy Commissioner Mr HS Sharma was shielding him.

It is further submitted that even the cheque tendered pursuant to the Deputy Commissioner's so-called order dated 22-7-2002 was also inclusive of a token interest amount of Rs.2507/- so that the petitioner would have to accept this small and insignificant amount of interest in order to get the principal rebate claim amount of Rs.1,36,998/-. The learned counsel for the petitioner has, therefore, pressed for the reliefs prayed for including payment of statutory interest and costs.

6. On the other hand, Mr DN Patel, learned Senior Standing Counsel for the respondents has submitted that since the principal rebate claim has been offered to the petitioner after filing of the petition, nothing further is required to be done in this matter. Mr Patel for the respondents is, however, not in a position to state as to what action has been taken by the Commissioner against Superintendent Mr Chauhan or Deputy Commissioner Mr HS Sharma who is now replaced by Mr Pranesh Pathak, deponent of the reply affidavit.

7. Having heard the learned counsel for the parties, we are of the view that the so-called explanation offered on behalf of the respondents for the delay in payment of the rebate claims cannot be accepted. When the assessee is entitled to rebate claims without any adjustment and even the Commissioner (Appeals) found substance in the grievance of the petitioner that illegal adjustments were made and continued against sanctioned rebate claims, the authorities were bound to pay the rebate claims to the petitioner with statutory interest. Apart from not

paying statutory interest to the petitioner, the respondents have also not taken any action against the officers who were responsible for the delay in payment of the rebate claims. The petitioner had made reference to the employees who were responsible for the delay and who were either demanding illegal gratification or shielding the officers making such demand. The Commissioner of Central Excise & Customs was expected to take a serious view of such specific complaint and to take appropriate action in light of such a complaint. Even if the Commissioner had no authority, he was required to invite attention of the higher authorities to such specific complaint made against the responsible officers of the rank of Deputy Commissioner and Superintendent. It, therefore, appears to the Court that while the petitioner would certainly be entitled to the reliefs prayed for, and the department would have to comply with the directions being issued by this Court, interest for the delay in payment of rebate claims as well as the costs which the department will have to pay to the petitioner must be reimbursed by the department from the officers who were responsible for the delay, apart from any other action which may be taken against the officers, if the petitioner's complaint contained in the representation dated 6-7-2001 is found to be correct.

8. The petitioner has given details about the extent of delay in payment of refund amount as set out in paragraph 3.7 hereinabove. There is no reason why the petitioner should not be paid the statutory interest on the amounts involved for the said delay at the statutory rate of interest which is 9%p.a.. The respondents also must be saddled with the costs of this petition quantified at Rs.10,000/-.

9. In view of the above discussion, the petition is allowed in terms of the following directions:-

I(a) The respondents are directed to pay the petitioner refund amount of Rs.1,36,998/- by an account payee cheque within one week from the date of receipt of the writ of this Court or a certified copy of this order.

(b) The respondents shall also pay the petitioner the interest at the statutory rate for the delay in payment of Rs.1,36,998/- from 17-11-2000 till the date of payment.

(c) The respondents shall also pay the petitioner

interest at the statutory rate of interest on the amounts refunded mentioned in column No.(iv) and for the period mentioned in column No.(v):-

Application Date	Amount claimed (Rs.)	Refund paid on	Amount refunded (Rs.)	Delay (days)	Interest Amount (Rs.)
	(i)	(ii)	(iii)	(iv)	(v)	(vi)
25-01-2000	36,718	4-4-2001	36,718	340	5,130
03-10-2000	4,34,712	4-4-2001	4,34,712	80	14,291
17-11-2000	2,31,161	4-4-2001	1,70,186	47	3,287
17-11-2000	1,47,876	4-4-2001	71,853	47	1,387
					24,095

(d) The respondents shall also pay the petitioner costs of this petition which are quantified at Rs.10,000/- (Rupees ten thousand) in one set.

(e) The aforesaid directions No.(b) to (d) shall be complied with within one month from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

II. If the respondents do not comply with the aforesaid directions within the aforesaid time limit, the respondents shall be liable to pay further interest at the rate of 9%p.a. on the amount/s of interest awarded by this judgment and remaining unpaid on the date of expiry of the period/s stipulated in the aforesaid directions.

III. While the respondents shall pay the aforesaid amounts to the petitioner within the aforesaid time limit, the amounts of interest and costs shall be recovered by respondents No.1 and 2 from the officers who are found to be responsible for the delay and such inquiry shall be made within three months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier. Compliance with this direction and initiation of any disciplinary action against the officer/s responsible for delay shall be brought to the notice of this

Court by 6th December, 2002.

10. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(M.S. Shah,J) (K.A. Puj,J)
zgs/-